

STATE OF MICHIGAN  
COURT OF APPEALS

---

STEVEN SCHNEIDER,

Plaintiff-Appellee,

v

DENNIS MILLGARD and NANCY MILLGARD,

Defendants-Appellants.

---

UNPUBLISHED

May 6, 2003

No. 236570

Oakland Circuit Court

LC No. 00-023485-CH

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendants appeal by right from a judgment for plaintiff entered after a bench trial in this action to quiet title. We affirm.

Defendants contend that the trial court erred in concluding that a boundary line between plaintiff's property and defendants' property had not been altered through the doctrine of acquiescence. We disagree. This Court reviews for clear error the findings of fact made by a trial court sitting without a jury. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id.*

"The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line." *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001); see also *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). "The underlying reason for the rule of acquiescence is the promotion of peaceful resolution of boundary disputes." *Killips, supra* at 260. A claim of acquiescence to a boundary line based on the statutory period of fifteen years under MCL 600.5801(4) "requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary." *Walters, supra* at 456.

While defendants and plaintiff's predecessor in interest, Bernard Portnoy, may have informally treated three monuments in the ground as marking a boundary line between their respective parcels, we conclude that a licensing agreement made between defendants and

Portnoy defeats defendants' claim of acquiescence. The agreement, which was executed to allow defendants to use Portnoy's driveway and walkway, provides, in part:

The Undersigned hereby acknowledge that they have no right, title, interest or claim *of any nature whatsoever* in the heretofore described property [Portnoy's parcel] and are using the same solely at the license of BERNARD N. PORTNOY AND CHRISTINE J. PORTNOY, his wife. [Emphasis added.]

This licensing agreement, which included a description of Portnoy's parcel, explicitly indicated that defendants had no claim at all to any of Portnoy's parcel.

In *West Michigan Dock, supra* at 512, this Court held that "defendant's use with plaintiff's permission of property that was acknowledged to belong to plaintiff, could not, as a matter of law, entitle defendant to acquire property rights in the [disputed property] by adverse possession, prescriptive easement, or acquiescence." Similarly, defendants here acknowledged that they had *no claim* to Portnoy's parcel as described in the licensing agreement; they admitted that the land belonged to Portnoy. We acknowledge that *West Michigan Dock* is not directly analogous to the instant case. Indeed, *West Michigan Dock* involved the defendant's prior permissive use of a certain portion of the property that the defendant was also seeking to acquire through acquiescence, whereas the instant case involves defendants' prior permissive use of a *different* portion of the property (the driveway and walkway) than that claimed to have been acquired through acquiescence (the land marked by the three monuments). Nevertheless, we find *West Michigan Dock* instructive in its emphasis on the defendant having *acknowledged* that certain land belonged to plaintiff. Here, defendants *acknowledged* that the parcel of property described in the licensing agreement belonged to Portnoy. Portnoy did not acquiesce in defendants' claiming a portion of his land. See *Walters, supra* at 456. Accordingly, the trial court did not clearly err in concluding that defendants did not obtain title to the disputed land through the doctrine of acquiescence.

Because the resolution of this case turned on the language of the licensing agreement, defendants' additional argument on appeal is moot, and we need not address it.

Plaintiff asks that we award him sanctions under MCR 7.216(C) because this appeal was vexatious. We decline this request. Indeed, while defendants' appeal was ultimately unsuccessful, their argument was not frivolous. Given the evidence adduced at trial, they had a "reasonable basis for belief that there was a meritorious issue to be determined on appeal. See MCR 7.216(C)(1)(a).

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Jessica R. Cooper